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Legal DEPARTMENT

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Miscellaneous opinions

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19/5

19/5

Submitted.

In his opinion No.10577, dated 9.12.1941 the R.L.A. advised the H.D. that as the main question whether the Official Assignee is entitledto charge 5 p.c. or 3.p.c. is sub-judice, it is not necessary to enter into the merits of the case because Govt. will have to abide by the decision of the High Court.

2. In hisletter No.C, dated 19.12.41, the Official Assignee states that the Court was of opinion that thematerial date for determining the rate of commission was the date on which the scheme of arrangement was sanctioned by the Court viz. 15.4.1941. and not the date on which the amounts were actually paidpursuant to the scheme of arrangement. The Official Assignee states that unless the order made by the Court on 16.12.1941 is set aside in appeal, he shall be entitled to charge a commission at 3 p.c. only on the amounts receivedby him pursuant to the scheme of arrangement andthat he will have to refund to the insolvents a part of the commission alnady recoveredat the rateof 5 p.c. However, before filing an appeal, the Official Assignee wishes to obtain the opinion of Sir Jamshed Kanga and not of the Advocate General, as the latter appeared on behalf of the insolvents at one

stage. He desires that the Govt. Solicitor (he means perhaps Solicitors to Govt.) may be instructedto see him so that the question of filing an appeal may be decided at the conference with Counsel. The H.D. has forwarded the papers to R.L.A. requesting him to give the necessary instructions to the Solicitor to Government (should be Solicitors to Govt.).

3. It may be stated that the order of the Court that "the material date for determining the rate of commission was the date on which the scheme of arrangement was sanctioned viz. 15.4.41 and not the date on which the amounts were actually paid pursuant to the scheme of arrangement" appears to be correct. Similar view hasbeen expressed in the notes of A.S. andA.L.R. underlying R.L.A.'s opinion No.10577, dated9.12.41. The interpretation placedby the Court on rule 108(b) appears to be correct, andthere appears no case for an appeal. If approved, the legal position may be explained to the H.D. and it may be informed that there is no case for an appeal. It is open to the Official Assignee to consult the Solicitors to Govt. (vide rule 24 of L.O. Rules) and it does not appear necessary to give instructions to them.

Id./R.B.

A.S.

on meritsthe order passedby the Insolvency Court appears to be correct. However, it is open to the Official assignee to consult the solicitors to Govt.(see rule 24 of L.O.Rules) and no instructions from theR.L.A. would be necessary for the purpose.

D.S.Id/-
7/1

I agree with the note of A.S.

Attention is, however, invited to paras 4, 6 & 7 at pp.910 ante. It is for consideration whether we should keep this case pending till we get a copy of the judgment. Otherwise we need not express any opinion on merits but simply refer to L.O.R.24.

(Mrs) Id./8.1.42.

R.L.A.

Reply in terms of A.S.'s note.

Id. PMM 9/1

Submitte

The Official Assignee now forwards a copy of the judgmentof the Hon.'ble Mr. Justice Chagla and requests orders of Govt. whether an appeal should be filedin this case. The H.D. hasmerely forwarded these papersin continuation of the previous reference.

2. Attention is invited to the following observations in the judgment;-

"The rights of the Official Assignee to receive commission were finally determined and crystallised on the 15th April 1941, when the Court sanctionedthe scheme..... It is true that the question of commission payable to him cannot be determined till the amounts a actually paid pursuant to the scheme; but the rate of commission can be determined and was determined when the scheme was sanctioned bec in the very second clause of the scheme the Tr is directed to pay all fees, percentage, cost charges, expenses and commission payable to the Court and to the Official Assgn. Now this direction is given to the Trustee to pay the basis of the rate of commission payable to him under the rule then prevailing."

The above view of Chagla J. appears to b correct. A similar view was taken by this on the interpretation of rule 180(b). If ap the H.D. may be informed that the view of C J. is correct and correctly interpretes ru

and there is no likelihood of the appellate Court interfering with the decision.

Id./B. 8/1.

S.A.S.

Id./R.T.K. 9/1.

D.S. I agree with [illegible] 'A' in the office note above.

[illegible] I have submitted the main case to the R.L.A. yesterday

Id. VMS 9.1.42/

R.L.A.

See [illegible] order on the main case.

Id/P.M.M.9/1

Office of the R.L.A.

On merits the order passedby the Insolvency Court appears to be correct. However, it is open to the Official Assignee to consult the Solicitors to Government (see rule xx of Law Officers' Rules) and no instructions from the R.L.A. would be necessary for the purpose.

Sd/- (P.M.M.)
Remembrancer of Legal Affairs.

U.R. to M.D., No.252, dated the 10th January 1942.

D.L.R. Id./9.1.

S.A.S. R.T.K. o./-

D.S. V.M.S.9.1.42.

A L R Id./ 9.1.

Office of the R.L.A.

The position appears to be rather unsatisfactory. The donation of Rs.1,50,000 was x offered by Messrs.M.B.Desai and P.R.Bhatt as trustees of the late Mr. R.M. Bhatt and accepted by Government(Plase see papers underlying Government Resolution, General Department No.1814/33/ dat the 3rdFebruary 1937). It appears from the letter of Mr. P.R.Bhatt at page 191 ante that he claims to be the sole donor and that there are no trustees of the estate of the late Mr. R.M. Bhatt. He has however offered no explanation as to why the donation was offered by himself and Mr. M.B. Desai as trusteesof the late Mr. R.M. Bhatt. Mr. M.B.Desai the co-trustee has not also been consulted. Consequently both Messrs. P.R. Bhatt and M.B.Desai should be consulted in the first instance on the following points:-

(1) whether there are any trusteesof the lte Mr.R.M Bhatt; if not,

(2) why the donation was offered by them as trustees of the late Mr. R.M. Bhatt; and

(3) whether Mr. P.R. Bhatt is the sole donor.

Their explanation should be forwarded to the R.L.A. for considering the legal position.

Sd/ R.T.K.

for Remembrancer of Legal Affairs.

U.R. to G.D., No.9501, dated the 4th November 1941.

No.M/D462/42

Central Bank Building,
Esplanade Road.

Bombay 20th January 1942.

From

Messrs. Little & Co.,
Solicitors.

To

The Secretary to the Government of Bombay,
Legal Department.

Sub: Insolvent Motilal Champalal & others
Rate of commission to be charged
by the official assignee under.
Rule 180(b) of the Bombay Insolvency
Rules.

We have the honour to refer to our letter No.M/D 469 of yesterday's date and to state that Sir Jamshedji Kanga has now given his opinion in writing in pursuance of our request to him and it is as follows:

"In my opinion this is a fit case for appeal"

J.B. Kanga, 19.1.42.

We now await Government's instructions to file the memo of appeal which has now been drawn by Sir Jamshedji Kanga.

We have the honour to be,

Sir,

Your most obedient servants,

Little Co. Sd/-

Subd. with ref. to R.L.A.'s orders at

p.4 ante.

The last date for filing an

appeal is 23.1.42.

Id./D.D.20.1.42 no reasons are stated by Sir Kanga
S.S.

S.A.S. R.T.K. 20.1.

D.S. It is strange to obtain a counsel's opinion without a statement of the reason therefor. It appears from the last sentence overleaf that the memo of appeal has already been drawn up. A copy of that memo may be called for and Messrs Littled & Co. should also be asked to state the terms on which Sir J. Kanga is to be engaged in this case.

Id/-V.N.S.20.1.42.

R.L.A.

I don't think the procedure adopted by the Sols. to Govt is quite proper

A may be done

Id/Pmm.20.1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

In Appeal from its insolvency jurisdiction.

Appeal No. of 1942

Insolvency No.220 of 1938.

In re: Motilal Champalal , Totalal Champalal, Sunderlal Ramsarup, Hiralal Champalal, Ganeshilal Champalal, Jaykumar Champa lal and Pritamkumar Motilal all of Bombay Hindu Inhabitants the adult members of a joint and undivided Hindu family carrying on business in the name andfirm of Champalal Ramsarup at Kalbadevi Road outside the Fort in Bombay and in the name of Champalal Motilal at other places.- Insolvents.

The Official Assignee of Bombay and)
)
the Assignee of the Estate and) Appellant.
)
Effects of the Insolvents Motilal)
)
Champalal and others.)

v.s

Motilal Champalal, Totalal Champa-)
)
lal, Sunderlal Ramsarup, Hiralal)
)
Champalal, Ganeshilal Champalal,)
)
Jaykumar Champalal and Pritamkumar)
)
Motilal all of Bombay Hindu Inhabi)
) Respondents &
tants x the adult members of the joint)
) Debtors
andundivided Hindu family carrying)
)
on business in the name and firm of)
)
Champalal Ramsarup at Kalbadevi)

Road

Road, outside the Fort in Bombay)

andin the name of Champalal)

Motilal at other places.)

The official Assignee of Bombay and the Assignee of the estate and effects of Motilal Champalal andothers insolvents the Appellant abovenamedappeals against the order of the Hon'ble Mr. Justice Chagla in the above matter passed on the 16th day of December 1941 on the following amongst other reasons:-

(1) The learned Judge erred in holding that the Commission which the Appellant was entitledto charge on the amount paid in pursuance of the scheme of composition sanctioned by the Court on 18th April 1941 was 3 p.c. and not 5 p.c.

(2) The learnedJudge should have held that the said commission should be 5 per cent on the amount paid in pursuance of the scheme of composition the rate of 5 p.c. being the rate in force at the date of the actual payment or the amounts payable under the scheme.

(3) The learnedJudge erred in holding that rule 180(b) of the Bombay Insolvency Rules prior to its amendment by the notification dated Twenty fourth day of April One thousand nine hundred and forty one publishedin Part IV (c) of the Bombay Government Gazette applied to the present case.

(4) The learnedJudge shouldhave held that rule 180(b) as amended on Twenty fourt day of April One thousand nine hundred and forty one appliedto the present case and the rate of commission payable to the appellant was 5 p.c.

(5) The learnedJudge failedto appreciate that the intention and effect of rule 180(b) was that no commission was payable until assets or moneys were actually recovered or received by the Official Assignee.

(6) The learned Judge erred in not accepting the contentions of the Appellant that commission was payable at the rate in force at the date of the actual payment of the amounts payable under the scheme and not the rate in force on the date the scheme was sanctionedby the Court.

(7) The learned Judge erred in holding that if he accepted the contentions of the appellant he would in effect be giving retrospective effect to the amended rule 180(b).

(8) The learned Judge should have held that in charging commission under the amendedrule the Appellant had not sought to give any retrospective effect to the amendedrule.

(9) The learnedJudge erred in holding that the rights of the appellant were finally determined and crystallised on 15th April 1941 when the Court sanctioned the scheme.

(10) The learned Judge erred in holding that the rate of commission was determined when the scheme was sanctioned.

(11) The learned Judge should have held that the order of 15th April 1941 did not decide and could not possibly decide the rate or quantum of the appellant's commission which was not before the Court as an issue.

(12) The learned Judge erred in holding that the direction to the Trustee in the scheme to pay all fees percentages costs charges expenses and commission was a direction to pay on the basis of the rate of commission payable under the rules then prevailing.

(13) The learnedJudge failedto appreciate that the fact that the Appellant was the trustee and that charges commission etc. of the court and the Appellant were to be paid out of the moneys received under the scheme was irrelevant for the purpose ofdetermining the question whether the appellant was entitledto charge commission at the rate of 5 p.c. or 3. p.c.

(14) The learned Judge erred in holding that the material date was 15th April 1941 when the Court sanctionedthe Scheme.

(15) The learnedJudge was influenced in his judgment by considerations of hardship.

(16) The learnedJudge should have held that the commission to be charged by the appellant wasgovernedby the amendedrule 180(b) and that the material date was not the date on which the scheme wassanctioned but the date on which the amount was paid pursuant to the said scheme.

(17) that the order of the learned Judge is contrary to law and should be set aside.

The Appellant craves leave to add to amend or alter the above grounds of appeal.

Dated this 22nd day of January 1942.

Memorandum of Appeal

drawn by

Sir Jamshedji Kanga

Advocate.

Sd/-Little & Co.

Attorneys for the
Appellant.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

A. I. J.

Appeal No.3 of 1942

Insolvency No.220 of 1938.

The Official Assignee of Bombay ... ... Appllant;

vs.

Motilal Champalal anders. ,,, ... Respondents & Debtors.

Sir, Jamshedji Kanga for the Appellant

Mr. K.M. Munshi for the Respondents.

Coram: Beamount, C.J., &Kani

6th April 1942.

Oral Judgment. (Per Beamount, C.J.P.)

This is an appeal from a decision of Mr. Justice Chagla, sitting as the Insolvency Judge, and it raises a question as to the rate at which the official Assignee can charge commission under Rule 180(b) of the Insolvency Rules.

The facts are that the insolvents were adjudicated on the 1st of July 1938, and on the 6th of March 1940 a scheme of composition was suggested by the debtors, and in due course, on the 15th of April 1941, that scheme was sanctioned by the Court, and the adjudication was annulled.

The

The scheme provided, in substance, that the Official Assignee should be the trustee of the scheme, and under clause 3 he was, in the first instance, to pay all fees andpercentage, costs, charges, expenses and commission payable to the Court and to the Official Assignee out of the moneys to be received by him under the scheme. The under clause 4 he was to pay out of the balance of the moneys a composition of Rs.0-5-6 in the rupee. Then it was provided that certain outside parties were to pay him certain specified sums, and the scheme showed that there would be an estimated surplus in his hands after paying the agreed divided on the claims of creditions who were not to release their claims. At the date when the scheme was sanctioned rule 160(b) providedthat the official Assignee was entitled to charge a commission of ~~xx~~ 3 per cent on the amount paid in pursuance of a composition or scheme of arrangement. On the 24th of April 1941, that is 9 days after the scheme was approved, the rate of 3 per cent wasincreasedto 5 per cent, and the ~~xx~~ question is whether the commission chargeable by the official Assignee in the present case is at the higher or lower rate. There may be a question, on which we have heard some argument, as to whether the words "on the amount paid in pursuance of a composition or scheme of arrangement" refer to the amount paid

by ...

by the trustee under a composition or scheme of arrangement to the creditors, or the amount paid to the trustee by outside parties under that composition or scheme of arrangements. But it is unnecessary to express any opinion on that point, because in this case the moneys were paid by the outsiders to the Official Assignee as trustee of the scheme of arrangement after the date when the rate of commission was increased, that is to say, after the 24th of April 1941, the payments made under the Scheme to the creditors were therefore necessarily made after that date.

Mr. Justice Chagla held that the rate of commission was fixed as at the date when the scheme was sanctioned by the Court, and that to hold otherwise would be to give retrospective effect to the increase of the commission made by the alteration of rule. That view seems to me to be wrong. In my opinion, there is no question of giving retrospective effect to the rule. The commission has to be paid on the amount paid in pursuance of the composition or scheme of arrangement, and it seems to me that the commission must be charged at the rate existing on the date of payment. No doubt, when the Court sanctions a scheme, it must base its opinion as to the merits of the scheme upon estimated figures, which are based on the assumption that rates and duties applicable will remain the same. But many

schemes....

Schemes may take a long time to work out, and it is possible that rates and taxes may be altered, and any Court must take that possibility into account. Many schemes provide for the sale of immoveable properties or investments, on which sales stamp duty would be payable, and it is obviously possible that the rate of stamp duty may be altered after the date when the scheme is sanctioned. In my opinion, it would not be competent for the Court to sanction a scheme limiting the amount payable to Government by way of stamp duty, or by way of commission. It must be remembered that the commission payable to the official Assignee is not a sum payable to him as an individual; it is a sum payable to Government for the benefit of the services of its Officer, and it would not be competent for the Court to limit the rate at which the commission is payable. In my opinion, the meaning of Rule 180(b), so far as this point is concerned, is quite plain. The official Assignee must charge commission on the amount paid, and he must charge such commission at the rate allowed when the amount is paid.

In my view, therefore, the appellant is right, and the official Assignee is entitled to charge his commission at the rate of 5 per cent.

Costs of both sides to be paid out of the estate.

Per ....

(Per Kania J).

I agree. The misunderstanding appears to have arisen from the fact that the words usedin Rule 180(b) are that commission at 3 per cent is to be charged on the amount paid in pursuance of a composition or scheme of arrangement. The words there usedare not " on the amount payable in pursuance of a composition or scheme of arrangement." That difference in the phraseology makes it clear that the appropriate time for ascertaining the correct rate of commission on the amount to be charged is the date of payment, and not when the liability to pay the amount is declared.

No.M/L761/42

Central Bank Bldg.,
Esplanade Road

Bombay 30th January 1942

From

Messrs. Little & Co.,

Solicitors.

To

The Secretary to the Government of Bombay,
Legal Department.

Sir,

With reference to the correspondence ending with our letter No.M/L690/42 of the 27th instant, we have the honour to state that on our applying as usual for a copy of the judgment delivered in Suit No. 1226 of 1939 without payment of fees the office of the Prothonotary and Senior Master returned our application with the remarks:-

1. Why should the copy be supplied free of charge? and
2. Where is the appearance?

Until recently in all matters, where the copies were required for Government, we used to apply for and obtain certified copies of the relevant documents without payment of any fees and without entering any appearance. We, therefore, wrote to the Prothonotary and Senior Master on the 14th of January 1942 as per copy enclosed and we have now received a letter from him dated the 26th instant in reply a copy of which is also enclosed.

As the requirements of the Prothonotary and Senior Master, High Court, amount to a change of the practice hitherto prevailing, we beg to refer this matter to you for such action as Government deem proper. Until different arrangements are made we will enter appearance on behalf of Government in every case as required and pay the requisite fees for

of the Bombay High Court Rules is made by the Code of Civi

Procedure or by the Rules in PartsI and II of the said Rules the Present procedure and practice remain in force.

We may also draw your attention to clause 43 of the Letters Patent which deals with the requisition by Government for records of the High Court, etc. We shall be glad to have the Instructions of Government in this matter.

We have the honour to be,

Sir,

Your most obedient servants,

Sd/-Little & Co.

Solicitors to Government.

No.108 HIS MAJESTY'S HIGH COURT OF JUDICATURE
ORIGINAL SIDE:

Bombay, 26th January 1942.

From

S.J. RAHIMTOOLA, Esquire, B.A., LL.B., Barrister-at-law,
PROTHONOTARY AND SENIOR MASTER,
H.M.'S HIGH ~~HEH~~ COURT, BOMBAY.

To

Messrs. Little & Co.,
Solicitors to Government,
Bombay.

Suit No.1226 of 1938
Kusum Jamal Dhanani
vs.
The Empire of India Life Assurance
Co. Ltd., & Others.

Sirs,

With reference to your letter No.M/D 326/42 dated the 14th Januar ~~xxxx~~ 1942 in the above suit, I am directed by the Honourable the Chief Justice to state that there is nothing in the High Court Rules or in the Table of Fees annexed thereto which exempts Government from entering an appearance when applying through their attorneys for certifiedcopiesof documents on the file~~xx~~ of this Court, or from payment ofCourt fees for such copies. In all matters before the High Court Government should be treatedlike an ordinary litigant. The matter after all resolves itself into one of correct accounting. Whatever fees are charged to Government are ultimately credited to Government, but as the fees are earned by the High Court, it is proper that they should be recovered and shown in the High Court accounts. I have, therefore, to request you to enter an appearance and pay the Court fees for the copy of the judgment required by you.

I have the honour to be,
Sir,
Your most obedient servant,
Sd/-S.J.Rahimtoola
Prothonotary & Senior Master.

No.1953
Legal Department,
Bombay Castle, 5th March 1942.

From

P.M. Mees, Esq., Bar-at-Law, I.C.s.
Secretary to the Government of Bombay.

To

Messrs Little & Co.,
Solicitors to Government,
Central Bank Building, EsplanadeRead,
Bombay.

Gentlemen,

With reference to your letter No.M/D-761/42, dated the 30th January 1942, I am directed to state that Government agrees with the view expressed by the High Court in the letter of the Prothonotary and Senior Master, High Court, Bombay, No.108, dated the 26th January 1942.

I have the honour to be
Gentlemen,
Your most obedient Servant,

--
Sd/-R.T.K.
for Secretary to the Government of Bombay
Legal Department.

Submitted.

The India Office in its letter dated 8th July 1941 suggested that the transfer of the fund in question should not be effected without the order of the Court and it also desired to know whether the Government of Bombay or the Government of India was prepared to move the High Court to permit the transfer of the fund. The Government of India forwarded a copy of that letter to this Government with a request to inform it as to the reply that should be sent to the India Office.

2. In R;L.A.'s opinion No.10150 dated 5th November 1941, the P. &.S.D. was advised that as the Bombay Government had been in possession of the trust property as a constructive trustee, it is the Bombay Government that will have to apply to the High Court, Bombay, for its discharge and the appointment of the Government of Aden as a new trustee in its place under section 71 of the Indian Trust Act, 1882. It was also pointed out that the Court can order the cost of the application to be paid out of the trust property. The P. & S.D. has drafted a letter on the linesof the foresaid opinion of the R.L.A. and the same is shown to the R.L.A. for approval.

3. The draft-letter is based on the aforesaid opinion of the R.L.A. The P. & S.D. may be informed that the draft letter at p.121 ante as slightly amended, is legally in order.

Id./8.6.1.

S.A.S. Reply may be A - A

R.T.M. 7/1/- D.S. Id.V.M.S.

ANX 43—

Legal Department.

No legislation for controlling beggary appears to exist in the Province of Bombay. Attention of G.D. is, however, invited to the provisions of section 61(2) of the Bombay District Police Act, 1890, section 2 121 of the City of Bombay PoliceAct, 1902 and section 10 of the Bombay Children Act, 1924.

Id./PMM 25.3.
Secretary to Government,
Legal Department.

U.R. to G.D., No.2700k, dated the 25th March 1942.

R.I.No.1523/11.2.42.

Submitted with reference to this office U.R. to P.W.D. No.10511 dated 16.10.39. The facts of the case are stated in paras 1 to 3 of the note underlying that U.R. ✱.

2.The question for R.L.A. consideration is whether there is any objection to transfer the water connection of house No.43, 43A in Sanitarium Lane at Ghatkopar given to one Mr. Parmanand Keshavji Gandhy, to Mr. V.N. Thakkar who purchased the said house from Mr. Gandhy on 23.9.37.

3. In the sale - deedin respect of this property dated 23.9.37 between Mr. Parmanand Keshavji Ghandhy and his wife as vendors andMr. V.N. Thakkar and his mother as purchasers, it is stated that .....the vendors do and each ofx them grant .. .. unto the purchasers for ever. All that piece and parcel of Gawthan land or ground with the messuage tenement or dwelling house standing thereon situate . . . . . with all and singular, buildings, court yards' areas ways, wells, compounds, paths, passages,water, water courses, sewers, ditches, drains, trees, plants, lights, liberties, easements, profits privileges, advantages, rights, members and appurtenances whatsoever to the said piece or parcel of land or ground hereditaments and premises . . . . . subject to all rents, taxes, assessments, rates and duties now chargeable upon the same

the same or which may hereafter become payable in respect thereof to the Government of Bombay or the Municipality of Bombay". The reference to 'water water courses' may be to substeranean water. But the water connections viz.- pipes etc. would fall under the wording "appurtenances whatsoever" in the deed. The appurtenances may be to the land or to the premises which word includes the building (see the definition of the word "premises" in Black's Law Dictionery. p.1403. 3rd Edn.). As the water connection is fixed on to the land and the house it is an appurtenance, viz. an annexture or fixture. (see p.132 ibid). Section 8 of the Transfer of Property Act, 1882, provides inter alia that unless <u>different intention is expressedor necessarily implied</u>, a transfer of property passes forthwith to the transferee all the interest which the transferer is then capable of passing in the property and in the legal incidents thereof such incidentsinclude, where the property is land, the easements annexed thereto, the rents andprofits thereof accruing after the transfe and all things attached to the earth andwhere the prope ty is a house,' the easements annexed thereto, the rent thereof accruing after the transfer. and the locks and keys, bars, doors and windows and <u>all other things provided for permanent use therewith.</u> Under this section therefore the transferer viz. the vendor has passed to the vendee or the purchaser the water connection obviously provided for permanent use of the house.

If the vendor did not want to transfer the water connection, he should have definitely stated like i the sale deed or should have got the water connection disconnected beforehanding over possession of the land and premises. From the terms of the sale deed and the provisions of sec.8 of the T.P. Act as also from the conduct of the vendor at the time of the sale it is obvious that he has transferred to the vendee the water connection as well. His letter dated 28.9.37 at p.18 of File G/176(slip A) asking the Asstt. Engineer to discontinue the water connection seems to be an after thought. It is also significant that this letter is dated 28.9.37 i.e. written after the sale deed of 23.9.37 but no mention is made of the fact that the house has been sold by him. The sale deed also refers to the rates and duties payable to Govt.

4. It is true that Mr. Parmanand Keshavji had paid Rs.105 as attachment fee in the year 1937 when he applied for the water connection. When he sold the property, some arrears remained to be paid which were paid by M... V.N.Thakkar the purchaser under Rule 22(b) of the Rules for the supply of water in Salsette. Such a payment however by itself would not grant any right to be transferee which is not granted to him under the sale-deed or by statute. Under Rule 12 the service pipe and other fittings with the exception of the meter (Rule13) m attachment shall remain the property who shall, when required by t

or his staff, carry out such repairs from time to time. As Mr. Parmanand Keshavji Gandhi paid Rs.105 as attachment fee as the service pipes and other fittings except the meter were his property, the question has arisen whether this property has been transferred along with the land and the house by the sale deed dated 23.9.42. As stated in para 3 above it appears that this property has also passed to the transferee but as the transferee has filed a suit (p.30 File G/176 - Slip G), it would be better for the P.W.D. to await decision in that suit wherein the rights of the respective parties would be defined. The sale deed was not before the D.G.P., Thana when he gave this opinion but the view taken by him appears to be correct.

S.R.Potnis. 6.3.

A.S. I agree generally with the view taken by Mrs.Potnis Since however, the purchaser has already taken the matter to a court of law any expression of opinion by the R.W.A. on the merits of the claims of the parties will not serve any useful purprose. P.W.D. may, therefore await the decision of the Court in the matter.

R.T.K.7/3.

D.S. I agree with A.

Prima facie the view taken by the D.G.P. Thana in his No.853 of 1939 dated 20.7.1939 is correct.

2. As observed by D.S.P.W.D. at p.22 ante there does not seem to be any legal objection to Govt. continuing to supply water to the new owner.

3. From the letter dated 29.10.37 from Valji Naresy to the Asstt. engineer (at p.30 of

Office of the R.L.A.

Prima facie the view taken by the District Government Pleader, Thana & R.S.D., in his letter No.853 of 1938 dated 20th July 1939 is correct.

2. As observed by Deputy Secretary, P.W.D., at page 22 ante there does not seem to be any legal objection to Government continuing to supply water to the new owner.

3. From the letter dated the 29th October 1937 from Valji Naresy to the Assistant Engineer (At page 30 of the correspondence file, slip A), it appears that the matter has already been taken to the civil court at Thana and the decision in that suit may be awaited. No action on the part of Government appears to be called for at this stage and presumably none will be required if the suit is decided in favour of the purchaser.

Sd/- P.M.M.
Remembrancer of Legal Affairs.

U.R. to P.W.D. No.2859, dated the 1st April 1942.

Application under section 71 of the Indian Trusts Act, 1882, forthe discharge of the Government of Bombay as trustee and for the appointment of the Government of Aden as a new trustee in respect of the Sultan of Shehr and Mokalla Trust Fund.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3039,
Bombay Castle, 8th April 1942.

Letter from the Additional Deputy Secretary to the Government of India in the External Affairs Department No.D 1198/M/4 2 dated the 21st February 1942. Requesting that steps might be taken to move the High Court of Bombay to discharge the Governmentof Bombay as trustee and to appoint the Government of Aden as a new trustee in respect of the Sultan of Shehr and Mokalla Trust Fund.

Memorandum from the Political and Services Department No.2215-A dated the 25th March 1942. Transferring the above.

RESOLUTION. The Solicitors to Government should be directed to file an application in the High Court, Bombay, under section 71 of the Indian Trusts Act, 1882, for the discharge of the Government of Bombay as trustee and for the appointment of the Government of Aden as a new trustee in respect of the Sultan of Shehr and Mokalla Trust Fund.

By order of the Governer of Bombay,

Sd/-R.T.Kakrki,
for Secretary to the Government.

To

The Political and Services Department,
The Solicitors to Government (with P. & S.D.Files 2215-I to IV to be returned to the P. & S.D. when no longer required)

Officers of the R.I.A.

The petition may be signed by ~~x~~ any person who is acquainted with the facts of the case and is appointed to sign and verify it under rule 1 of Order ~~xx~~ 27 of the First Schedule of the Civil Procedure Code. The appointment may be made as in the appended draft G.R. which will be issued after the Political and Services Department specifies the name and designation of the officer to be appointed.

Sd/- H.G.M.
for Remembrancer of Legal Affairs.

U.H. to P. & S.D. No. 4795 dated 10th July 1943.

53

Application under section 71 of the Indian Trustees Act, 1882, for the discharge of Government of Bombay as trustee and for the appointment of the Government of Aden as a new trustee in respect of the Sultan of Shehr and Mokalla Trust Fund.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No.
Bombay Castle, July 1943.

Read Government Resolution, Legal Department No. 3039 dated 8th April 1942.

Letter from Messrs Little & Co., Solicitors to Government Bombay No. L/D 5302/42, dated 17th July 1942.

RESOLUTION: In pursuance of Order XXVII Rule 1 in the First Schedule to the Code of Civil Procedure, 1908, Government of Bombay is pleased to appoint ..... to sign and to verify the application on behalf of the Government.

State name and designation of the officer.

By order of the Governor of Bombay,

Sd/-P.N.Moos,
Secretary to Government.

Application under section 71 of the Indian Trusts Act, 1882, for the discharge ~~from the appointment~~ of the Government of Bombay as trustee and for the appointment of the Government of H Aden as a new trustee in respect of the Sultan of Shehr and Mokalla Trust Fund.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 5068,
Bombay Castle, 26th July 1942.

Read Government Resolution, Legal Department No. 3039, dated 8th April 1942.

Letter from Messrs. Little & Co., Solicitors to Government, Bombay addressed to the Chief Secretary Government, Bombay addressed to the Chief Secretary to Government of Bombay No. L/D 5302/42, dated the 17th July 1942 forwarding a draft of petition to be submitted to the High Court under the Indian Trust Act, 1882 for approval and requesting to appoint some one to sign the same on behalf of the Government of Bombay and to verify it as is done under Order 27 rules 1 of the First Schedule to the Civil Procedure Code, 1908 in a suit filed by or against Government.

RESOLUTION. In pursuance of order XXVII of Rule 1 in the First Schedule to the Code of Civil Procedure 1908 the Government of Bombay is pleased to appoint Mr. I.H. Taunton, C.I.E., I.C.S., Chief Secretary to the Government of Bombay, Political and Services Dept. to sign and verify the application on behalf of the Government of Bombay.

By order of the Governor of Bombay,
Sd/- B.G.M.
for Secretary to Government.

To

The Political and Services Dept.
The Solicitors to Government.

G.R.No.323(V/42.

Submitted.

The facts are as follows:

2. By G.O. No.1986 dt/-22.3.1919 Govt. sanctioned a building grant of Rs.15,000/-to the League of Mercy for the purchase of the site and the building standing thereon for conducting the Home School at Nasik. It appears that another grant of Rs.10,174 was sanctioned by Govt. by G.R.ED No.1875 dt.27.4.1920 to assist the League in erecting some new buildings. It appears that as required by rule 59 read with rule 56 of the Code of Regulations for European Schools in the Bombay Presidency the League executed a trust deed for securing both the grants amounting Rs.25,000/- and odd. (Vide note of Hon'ble Sir Maurice Hayward dt/-19.1.24 at pp.11,12 of H.D. file 154/1925).

3. As, however, the General Commitee of the League of Mercy considered it desirable to remove the Home School from Nasik to Khandala, the League applie to Govt. on 21.12.23 for its consent to the sale of Nasik property with the object of securing another property at Khandala to which the children of he Home School could be removed and also wished to know whether Govt. would be willing to allow the building grants made to he League for the Nasik Home School not to be refunded but to be transferred to the Khandala Home School. In Govt. letter No.2811 dt. 17.7.1924, Govt. accorded their consent to the transfer of the building grants aggregating Rs.25,174 to the proposed hostel at Khandala subject to cerain

for Rs.61,000/- and the League was asked to execute a release of trust in favour of the S. of S. (vide G.R.R.D. No.2982/24 dt.19.1.25) In his letter dt.6.4.41 the Right Rev. the Bishop of Bombay however, states that the sale produced Rs.35826/- to the League. This fact indicates thata sum of Rs.25174/- granted to the League as grant-in-aid was withheld by Govt. from the price paid to the League.

4. From the trust deed dt. 1.10.1926, executed by the League of Mercy, it appears that the Govt. granted to the League a fresh grant of Rs.12,500/- for the purchase of the premises at Khandala and another sum of Rs.7192/- for alterations and extensions to the buildings. The total grant of Rs.9692/- made by Govt in respect of the buildings was secured in trust on the property under the aforesaid trust deed. From the leter of Rt.Rev. the Bishop of Bombay dt. 6.10.41, it appears that the League of Mercy has under its consideration the sale of the aforesaid property formerly known as "Amrit Villa" and now know as "St. Christopher's Home". The value of the property including the site is estimated at about Rs.57425/- but the offer so far received is approximately Rs. 20,000/-. The League wishes to know whether Govt. would require the grant to be repaid in full or the grant to meet cost of the new property which the League is able to obtain or build. The Inspector of European Schools, D.P.I. suggests the following alternatives:-

(1) The league should deposit the amount of grant (Rs.19692/-) with Govt. and obtain release of the Khandala property for private sale, or:-

(2) The League should first purchase a new property satisfying the requirements and validity to justify the grant of Rs.19692/- proposed to be transferred and convey it by a legal document to Govt. before the Khandalla property can be released.

The R.L.A. is requested to examine the legal position.

5. Under the terms of the trust deed dt. 1.10.26, the League is bound to maintain and keep at all times in good and substantial repair and condition the buildings and to use them as and for the purposes of a boarding house of children Home and manage and conduct the boarding House in accordance with the rules and regulations of the E.D. I. further provides that in the event of default being made in performance of any of the conditions, the building grant of Rs.19692/- shall lapse and shall be repayable to Govt. Since it is proposed to sell the said propertyit is necessary that it should be discharged from the trust and this could only be done by the League repaying the amount of grant to Govt. (vide rule of Code of Regulations for European Schools) and then Govt. executing a release of trust so as to enable the League to sell the property free from any incumbrance. The second alternative presupposes that Govt. is prepared to transfer the whole amount to the —

of the fact whether the property purchased is a sufficient securing for the grant of that amount. There appears no objection to accept either of the alternatives but for the reasons stated above, the first one is preferable.

E.Bhamgara Id./9.4.

S.A.S.

The legal position under the Trust deed dated 1.10.1926 read with the Code of Regulations for European schools in the Bombay Province is that unless Govt. release the Khandala property from the trust either on repayment of the building grant of Rs.19692 or the transfer of the lien to another property it would not be legally feasible for the League of mercy to dispose of it. Consequently either of alternatives proposed by the Inspector of European Schools B.W. in para 3 of his letter at p.13 ante would be legally suitable.

R.T.K. Id./-10.4.

A.L.D.

I agree Id. M.H.10/4

R.L.A.

Id.PAR 10/4.

Office of the R.L.A.]

It has been repeatedly pointed out that R.L.A. opinions are meant for the guidance of Government and its Officers and consequently the opinions should be treated as confidential. Ordinarily the members of the public should not be allowed access to opinions of the R.L.A. (see R.L.A.'s No.5532, dated 16.5.1939). But it is within the discretion of the Administrative Department concerned to communicate the substance of the opinion if the circumstances of the case so justify and in such cases the R.L.A. needs not be consulted.

SD/PMM 16.5.]

Remembrancer of Legal Affairs.

U.R. to G.D. No.4104 dated the 18th May 1942.]

Office of the R.L.A.

The question that arises for consideration is whether the Thaker of Vadgam who exercises jurisdiction over the portion ofthe Taled Modasa Road passing through his territory which was constructed and is being maintained by the Government of Bombay, has a right to impose legislation afecting motor vehicle traffic on that road.

2. The road in question is a provincial road constructed by the Government of Bombay on land surrendered to that Government by the Thaker ~~xxxxxxxxxxxxxxxx~~ of Vadgam under an agreement made in 1899. The rights of the Government of Bombay over this land are, therefore, limited to the extent of the rights transferred to them by the State. The question of cession of sovereignty or the cessi Jurisdiction does not appear to have been considered at the time of agreement. The R.L.A. has already expresseddoubt whether jurisdiction or sovereignty was transferred. Please seeU.R. to P.W.D. No. 453 dated the 15th January 1938. The R.L.A. also advised that the Government of India should be consulted. The Government of India in their letter No.F.254-I R.38 dated the 5th September 1938 addressed to the P.W.D. strongly expressed the opinion that there had been no cession of jurisdiction. That opinion seems to be right and it would be advisable to be guided by it and enter into reciprocity with the Thaker.

Sd/-PMM 28.5.
Remembrancer of Legal Affairs.

U.R. to P.I & S. D. No.4425, dated the 29th May, 1942.

63

No.2811/K,
Educational Department,
Bombay, Castle, 4th May 1942.

From

The Joint Secretary to the Government of Bombay,
Educational Department.

To

The Right Reverend the Bishop of Bombay,
Bishop's Lodge, Malabar Hill,
Bombay.

Subject:- League of Mercy Home, Khandala,
Amruth Villa (St. Christopher's Home).
Disposal of -

My Lord,

In reply to your letter No.94 dated the 6th October 1941, on the subject mentioned above, I am directed to state that as the League of Mercy intends to sell privately its property at Khandala, known as "Amruth Villa" (now known as "St. Christopher's Home"), Government will have no security for the grant of Rs.19,692/- paid by it to the League until another property purchasedby the League and found to be in order is conveyed to Government. I am, therefore, to say that unless the League provides for the amount of Rs.19,692 to be recovered from the Khandala property under the Trust Deed it cannot be ordinarily released for private sale. I am to suggest the adoption of one of the following two alternatives in this case:-

(1) The League should deposit the amount with Government and obtain release of the Khandala property for private sale, or

(2) The League should first purchase a new property satisfying the requirements and validity to justify the grant of Rs.19,692 proposed to be transferred, and convey it by a legal Deed to Government before the Khandala property can be released.

There is no objection to the transfer

property provided/the property and the purposes for which it will be used satisfy the usual requirements of the Educational Department.

Your obedient servant,

Joint Secretary to the Government of Bombay
Educational Department.

No. 2311-E,
Educational Department,
Bombay Castle, 4th May 1942.

Copy forwarded for information to:

the Director of Public Instruction,

the Remembrancer of Legal Affairs,

the Finance Department.

By order and of the Governor of Bombay,

Sd/-
for Joint Secretary to the Government of Bombay
Educational Department.

63

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Educational Department,
Bombay, Castle, 4th May 1942.

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(1) The League should deposit the amount with Government and obtain release of the Khandala property for private sale, or

(2) The League should first purchase a new property satisfying the requirements and validity to justify the grant of Rs.19,692 proposed to be transferred, and convey it by a legal Deed to Government before the Khandala property can be released.

There is no objection to the transfer of the grant to another

Submitted:

The F.D. proposes to include a rule in the Financial Publication No.II to the following effect: If it is not possible for a pensioner to present in person to the Treasury Officer a declaration to have his pension paid by money order, the T.O. may accept instead a written declaration duly verified by a gazetted officer. If the pensioner is unable to sign such a declaration, the T.O. may authorise payment on production of a certificate from the Civil Surgeon of the district or a Registered Medical Practitioner to the effect that the pensioner is alive but unable to sign the required declaration: Provided the pension is paid to the heir, not being a minor, who is certified by the Collector to be the heir. The R.L.A. is requested to advise on the question whether it is necessary to obtain an indemnity bond from the heir in such cases.

2. The question involved does not appear to be one of law; but one for the administrative Department to decide. It is true that the taking of an indemnity bond would further secure the interests of Govt. But it has to be noted that the heir who claims the money holds a certificate from the Collector of the District that he is the heir of the pension in theevent of the pensioner's death; and holds a certificate from the

...rgeon or a R...gistered Medical Practi-
tioner that the pensioner is alive but is unable to
sign the declaration himself. The proposed procedure
would appear to be ...mbrous and difficult to work
in practice. If the F.D. decides to go into such
indemnity bonds that Department may consider
whether it would not be feasible to lay down a limit
(say 100 rupees) upto which indemnity bonds need not
be insisted upon.

Id.KO/5.

S.A.S. Please put up financial publication No.II

Id. R.T.K, 23.5.

Subtd. herewith

Id./-23.5.

S.A.S. Under what provisions does the Collr.
issue such certificates?

Id./-R.T.K. 25.5.

Mr. Deshmukh.

R...subtd.

The certificate by the Collector referred to
in sub-para 2 of the draft rule does not appear to be one
contemplated under any provision of Ind...

Id./25.5.

S.A.S. There appears to be no legal objection to the
proposed rule. It is always safer to take an indemnity bond from
the heir before payment is made, but it is for the administrative
...rtment to decide whether an indemnit bond should be insisted on
when the heir holds the heirship certificate from the

R.T.K. 27.5.

Submitted:

One Mr. M.M. Lad, a pleader of Belgaum was nominated by Government as a non-official member of the Rural Development Board, Belgaum under rule 4(1)(b) of the District Rural Development Board, Belgaum Rules. It appears that under rule 6 Mr. Lad was then nominated as the "non-official" vice chairman of the Board. He has also been elected as a "non-official" member of the Provincial Rural Development Board constituted in accordance with the instructions contained in G.R.R.D. No.6104/39 dtd 15.11.1941. with effect from 1.5.1942, however, Mr. Lad has been appointed as Asstt. Public Prosecutor Belgaum.

2 On the above facts, the question for the R.D.A.'s consideration is -

Whether by virtue of his appointment as Asstt. Public Prosecutor, Belgaum Mr. Lad is disqualified from continuing as -

i) as a member of the D.R.D.Board,
ii) as vice-chairman of the District Rural Development Board, and
iii) as a member of the Provincial Rural Development Board.

3. The District Rural Development Board, Belgaum Rules not having been framed in pursuance of the provisions of any enactment have no statutory force. They are merely executive rules framed by Govt.

4. As regards question (i) under rule 4(1), the Board shall consist of the following classes of members, namely:-

(a) ex-officio,

(b) those nominated by Govt. or/and,

(c) those elected by such persons or su-

such bodies and in such manner

as may be determined by Govt."

Rule 4 does not however, prescribe the numberof ex-officio, nominated or elected members and consequently if the number ofex-officio or nominated membes is increased or decreased, the constitution of the Board would remain unaffected. Rule 5 provides that the members nominated or elected under rule 4(1) shall ordinarily hold office for a period of two years: Provided that Govt. may direct that a particular member shall hold office for less than two years. This rule prescribes the ordinary term of office of the nominated and elected members. There, however, appears no provision in the District Rural Development Board, Belgaum, Rules prescribing the disabilities of nominated or elected members. Assuming, therefore, that on being appointed asAsstt. Public Prosecutor, Belgaum, Mr. Lad has become an "ex-officio" members, in the absence of a provision made in therules fixing the proportion of ex-officio and nominated members constituting the Board and prescribing the general disqualifications on incurring of which a member could be deemed to have been disabled from continuing to be a nominated member he cannot be held to have been disqualified to continue as a member of the Board.

5. The second question is whether Mr. Lad is disqualified to continue as vice-chairman of the Board. The question that next reduces itself for consideration is whether on his appointment as Asstt. Public Prosecutor, Mr. Lad has ceased to be a "non-official" member and become an "ex-officio" member as contemplated by rule 4(1)(a). Rule 6 provides that the Collector shall be the "Ex-Officio" Chairman of the Board and the President, District Local Board, or or any other non-official member nominated by Govt. shall be the Vice-Chairman of the Board

"The expression "ex-officio" means by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer which are not specifically conferred upon him, but are necessarily implied in his office; these are ex-officio" (vide p.745 of Black's Law Dictionary). The expressions "official" and "non-official" where used in relation to any person, mean respectively a person who is or is not in the civil or military service of the Crown in India (p.803 of Iyer's Law Lexicon of British India). An Asstt.P.P. holds an office under the crown. It is very doubtful if the word "ex-officio" used in clause (a) of sub-rule (1) of rule 4 read with sub-rule (2) was intended to include an Asstt. P.P. who was not a servant of Government at the time of his appointment as a member of the Board. It cannot, therefore, be said that on his appointment as Asstt. Public Prosecutor, Mr. Lad become "ex-officio" member of the Board. If he was is not an "ex-officio" member, he will continue to be a "non-officio" member, he will now continue to be a "non-official" member. As these are mere executive rules, it is for the R.D. to decide the question on way or the other. If, however, the R.D. decides that he is no longer a "non-official" he may be removed from office as vice-Chairman under the second proviso to rule 5.

6. As regards the third question, in view of the discussion in para 5 above, it appears that Mr. Lad can continue to be a non-official member elected by the District Rural Development Board, Belgaum (vide entry "16 to 35" under the heading "Elected" at p.2 of G.R., R.D.No.6194/38 dated 15.11.41), but if he is deemed to be "non-official" he may resign from the Provincial

/Board.

/-/ K.P.Bhangare/

Office of the R.L.A.

H.L.A. agrees with the Secretary Revenue Department, that under the District Rural Development Board of Belgaum Rules Mr. Lad may continue as a member of the District Rural Development Board, Belgaum; but if Government is to follow the rules strictly, he ought to resign his membership of the Provincial Rural Development Board and his Vice-Presidentship of the District Board since the holders of these posts are required to be non-officials.

Sd/RRM
Remembrancer of Legal Affairs.

U.R. to R.D. No.6206, dated the 30th July 1942.

Submitted.

2. Maherban Shambhusing Amarsing Jadhevrao Raje, a First Class Sardar in the Deccan and the Jahagirdar of Malegaon Budruk in the Poona Distt. who was invested with powers under Bombay Regulation XIII of 1830 to receive, try and decide all original suits in the village of Malegaon Budruk now states that due to old age, he is not able to work as usual and requests Govt. that his eldest son Raja Ratansing who is to succeed him may be invested with powers under the Regulation. The District Judge, Poona, and the High Court recommend his request the H.D. proposes to confer these powers on the son but facts doubtful whether these powers can be conferred on him when he is not in fact a Jahagirdar. The question for consideration of the R.L.A. whether the powers under Bombay Regulation XIII of 1930 can be conferred on the eldest son of the Jahegirdar when the former is still to succeed the latter as Jahagirdar.

3. Para. first of Rule 1 of the Bombay Regulation XIII of 1830 provides that it shall be competent to the Provl. Govt. to grant sanads to persons of the description stated in the preamble, whose names and possessions are enumerated in the list furnished by the provl. Govt., conferring on them authority to try and determine all original suits of whatever amount that may be either filed in their courts, or may be referred to them by the agent or Judge. The persons described in the preamble to whom sanads

sanads can be granted by the P.ovl. Govt. are Jahagirdars, Saranjamdar or Inamdar. Para. second of Rule 1 provides that the sanads shall define the territory or Jagir over which the Jahagirdar's juriadiction extends, and be drawn out according to the form marked A, in the Appendix. The reference in the sanad in Appendix A to words "resident within the boundary of your jagir" and "boundary of your jagir" in paras 1 and 2 thereof clearly show that the sanad can only be granted to a Jahagirdar, Saranjamdar or Inamdar holding alienated lands. But the Bom. Regulation XIII of 1830 (Application) Act, 1840 (Bom.XV of 1840) enacts that the provisions of Regulation XIII of 1830 be made applicable to the Agents of foreign soverigns having lands and possessions in the British territory of the Bombay Province, and to guardians and such other individuals as the Provl. Govt. may consider it expedient to invest with the powers contained in the aforesaid Regulation: Provided that in all cases the authority conferred shall be revocable at the discretion of the Provl. Govt. The words underlined above show that such sanads can also be granted to persons who are not actual holders of alienated lands, as in the present case. But a reference to Act XV of 1930 will have to be made in sanads granted to such persons (Please see R.L.A.'s opinion at item 3 of Col. 1485 of the Digest of Opinions Vol.II F-Z)

There is therefore no legal objection to granting such a sanad to the eldest son of the Jahagirdar, although the son is not yet a Jahagirdar himself.

Id. P.S.Nadkarni 28.8.

A.S.

The attention of R.D. may be invited to the Bombay Regulation XIII of 1830 (Application) Act, 1840(Act XV of 1840) and that Deptt. may be informed that there is no legal objection investigating Raja Ratansing with powers if Govt. consider at expedient to do so.

Id. R.T.K.21.8

A.L.R.

I agree. Reply may be suggested by A.S.

Id./-R.S.H. 24.8.

R.L.A. I agree. Id./P.N.M.

Office of the R.L.A.

The draft Sanad at page 21 ante as slightly amended, is in order. It is presumed that Ratansing Shambhusing to whom it is proposed to grant the Sanad has succeeded his father as Jagirdar of the village.

Sd/- P.N.M. 13.11.
Remembrancer of Legal Affairs.

U.R. to H.D., No.9181, dated the 14th November 1942.

Office of the R.L.A.

The President of the District Wakf Committee, Ahmednagar, requests that he may be supplied with copies of certain Government Resolutions for production in court. The question is whether the copies can be supplied to him. The Ahmednagar District Wakf Committee is constituted under section 6L(1) of the Musselman Wakf Act, 1923. It is a statutory body but not an official body. The expression "Official body" presumably refers to an institution conducted and controlled by Government. Under rule 7 of the "Rules ~~of~~ for Inspection, Search or obtaining copies of Documents from the Records of the Secretariat" printed at p. 2010 of Bombay Government Gazette Part I dated 26th August 1937 copies of Government Resolutions cannot, in any case, be given to private individuals. But the Wakf Committee while not an official body is something more than a private individual.

The above Rules of search do not cover the present application and unless there are other rules covering this ~~x~~ case, it would seem to be a matter left to the Administrative Department's discretion.

Sd/P.N.M.
Remembrancer of Legal Affairs.

U.R. to R.D. No.7280, dated the 9th September 1942.

Legal Department/10250
2.6.42.

Submitted.

2. Please see the Prothonotary's letter at p.1 ante. The High Court proposes to amend items 31 and 32 of the Table of fees at p.405 of the Rules and Forms of the Bombay High Court Original Side. 1936. In their Lordship's view a charge for the first day of Rs.2 for calling on suit or appeal for trial, ~~xxx~~ argument or judgment under item 31 is inequitable even though the case may take up 5 hours, while under item 32 the fee leviable would be Rs.20 for the second day even though the hearing may last for half an hour only. Their Lordships therefore propose to give up 'calling charges' under item 31 and levy a uniform fee of Rs.4 per hour or part of an hour even on the first day. The amendments proposed by the High Court are at p.3 ante and are shown to Govt. for obtaining the approval of H.E. under sec.224(d) of the the Govt. of India Act, 1935. The papers are shown u.o. to the R.L.A.

3. H.D. may be informed that the R.L.A. has no remarks to offer on the proposed amendments. The papers may be seen and returned.

Id./- N.N.Nadkarni. 1.10

S.A.S.

"A" may be done.

Id./R.T.K. 2.10.

A.L.R.

I.D./P.S.H. 2.11.

R.L.A.

Id./P.H.H. 3.10.

Office of the R.L.A.

Seen and returned.

2. The R.L.A. has no remarks to offer on the proposed amendments.

Sd/- .P.S.M.
for Remembrancer of Legal Affairs.

U.R. to H.D. No.8069, dated 6.10.1942.

submitted for signature.

Id./-

2. Please see the letter of Mr. P.M. Lad, D.J. Belgaum (p.1 ante) and the Chief Secretary note at pp. 11-12 ante. Chief Secretary is of the view that Mr. Lad can be permitted to appear for Kan-la exam. under rule 10 of Govt. Officers Regional Language Exam. Rules & earn a reward under rule 11(2). The question for the consideration of the R.L.A. is whether Mr. Lad can be permitted by Govt. Officers' Regional Language Exam Rules and earn a reward under rule 11(2).

3. Mr. Lad has already passed language examinations in Gujarati & Hindustani under rules 3 and 4 of Govt. officers' Regional Language Exam. Rules. Prior to his appointment as D.J. Belgaum, he had put in more than 12 years' service and as such rule 6 of the Rules which applies to officers of less than 12 years' service and prescribes an examination in the regional language of the new district to which an officer is transferred does not apply. Rule 10 provides inter alia that an I.C.S. officer who has passed the examinations prescribed under rule 3, 4 and 6 may with the permission of Govt. appear for an examination in a second regional language spoken in the district, division or subdivision, in which he is serving, provided that such second regional language is not his mother-tongue. It is true that under this rule an officer can be permitted to appear for an examination in the second regional language only after he passes examinations prescribed under rules 3, 4 and 6. Mr. Lad has already passed Gujarathi and Hindi examinations under rules 3 and 4 but ..

There rules do not appear to be statutory Rules.

transferredto a district with a different regional language when he had put in less than 12 years service and pass a languag e examine prescribed under rule 6. It appears that althoug h Marathi is also one of the regional languages under H.D. Notifin. No.2433/7, dt. 21.9.27 (p.3 ante) it has not been included in rule 5 through oversight. His mother tongue being Marathi there appears no objection t Govt. permitting Mr. Lad to appear for Kannada language examination under rule 10 and his earning a reward under rule 11(2). The view taken by the Chief Secy. in his note, dated 4.9.42 at pp.11-12 ante, appears to be correct.

Id./ P.S. Nadkarni.

S.A.S.

The view taken by the Chief Secretary is correct.

2. An examination in one of the regional languages prescribed by rule 3 and that in Hindustani prescribed by rule 4 of Govt. Officers' Regional Language Examinations Rules are compulsory, whereas an examination in the regional lan uage of the district is compulsory under rule 6 for an officer of less than twelve years' service. Rule 10 inter alia provides that an officer who haspassedthe examinations prescribed under rules 3, 4 and 6 may in the case of officers of the Indian Civil Service with the per mission of Govt. appear for an examination in a second regional language spoken in the district, division or sub-division in which he is serving provided that such second language is not his mother tongue. All that this provision says is that those who have already passed the compulsory examinations under rules 3, 4 and 6 may appear for examination in another regional language with the permission of Govt. Mr. Lad is an I.C.S. officer of more than twelve years' service and consequently rule 6 does

does not apply. He has already passedthe regional examinations under rules 3 and 4. It is not therefore compulsory for him now to pass another regional language examination. However if he wants to appear for such examination, he can do so with the permission of Government under rule 10.

Id./R.T.K.1.10.

A.L.R.

I agree.

R.L.A.

Reply may be-

The Chief Secretary's argument in para 2 of his note is correct. Mr. Lad would be entitled to reward.

Id./-P.S.H.

R.L.A. Id./P.N.M. 3.10.

Office of the R.L.A

The Chief Secretary's arguments in paragraph 2 of his note is correct. Mr. Lad would be entitld to reward.

Id,/P.M.M.

R.L.A.

U.R. to P. & S.D.No.8080, dated 6th October 1942.

Submitted for signature.

Id./-

S.A.S.

Id.

A.L.R. Id./-

R.L.A.

Submitted after issue with an index card for approval. File in O.Misc./42.

Id.

Submitted :-

Please see R.L.A.'s opinion No.10592, dated 9.2.1941. The Supdt. Engineer, Central Circle has now submittedhis report to Govt. under rule 108 of L.C. Rules for institution of a suit againstMr. M.D. Desai. The Sec. P.W.D. hasnow referredthe papers to the R.L.A. for his advise whether a suit can be successfully instituted against Mr. M.D. Desai. He, however, states that the deposit has already been forfeited, and that there are many alterations in the original conditions of auction according to which the lease of the land was only for one year. The Secy. P.W.D. wishes to take these factors into consideration in deciding the question as to whether the suit would succeed.

2. Mr. Desai's claim against Govt. for the refund of the amount of Rs.305/- (Rs.205 amount of the bid + Rs.100 deposit) is clearly time-barred. The question is whether Govt. can successfully institute a suit against Mr. Desai for recovery of Rs.523/- In this connection attention is invited to para 3 of A.S.'s note dated 3.12.41 from which it would be seen that for the reasons stated therein it is difficult to guarantee success of a suit instituted by Govt. against Mr. Desai. It is not clear whether Mr. Desai is solvent to pay the costs. If approved, the legal position may be explained to the P.W.D. and then it may be left to that Dept. to consider whether a suit should at all be filed.

Id./-E.P.Bhangara.21.9.

S.A.S.

The agreement of l ase of Govt. land requires to be in writing (see section 175(3) of the Govt. of India Act, 1935): and if it is for a term exceeding one year, it also requires registration (see section 17(1)(d) read with section 90 of the Indian Registration Act) In the present case the agreement of lease was not made in writing. There is therefore, no concluded agreement (see section 10 of the Indian Contract Act) Consequently no claim for damages for breach of the agreement can be validly made against Mr. Desai.

Sd./ R.T.K. 24.9.

U.R. to P.W.D. No.8107 dated7.10.42.

19/5

19/5